

REMARKS

Non-elected claim 1 is canceled, new claim 14 is added; thus, claims 2-14 are pending.

Claims 2, 3 and 13 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Publ. No. 2003/0066431 to Fanzutti. Claims 4-12 were rejected under 35 U.S.C. 103(a) as being unpatentable over Fanzutti. It is respectfully submitted that claims 2-13 are neither anticipated nor unpatentable over Fanzutti.

Fanzutti does not disclose a cartridge that contains a liquid dairy-based ingredient, as recited in claim 2, and by dependency in claims 3-13. The Office action does not identify any disclosure in Fanzutti of a cartridge that contains a liquid dairy-based ingredient. Instead of a cartridge that contains a liquid dairy-based ingredient, Fanzutti discloses in paragraphs 69 and 78 a pod having a "nondairy creamer." Other mentions of creamer in Fanzutti, paragraphs 102 and 107, also fail to disclose a liquid dairy-based creamer.

As described in the present application, page 2, "consumers consistently indicate that the use of such powdered dairy-based products adversely affects the taste, colour and texture of the final beverage. In addition, powdered dairy products cannot be used to produce an authentic looking frothy milk-based foam as desired by consumers for cappuccino-style beverages." Because Fanzutti does not disclose a cartridge that contains a liquid dairy-based creamer, it will also have the same disadvantage. In contrast, the use of a liquid dairy-based creamer, as recited in claim 2, advantageously permits the ability to dispense liquid dairy-based ingredients for the formation of beverages having an authentic look, taste and mouth feel which have previously been possible using non-cartridge based systems such as the use of a separate steam wand to froth bulk quantities of milk.

With respect to claim 4, there is no disclosure in Fanzutti that a second pod is dispensed after dispensing and removing a first pod. Instead, Fanzutti is directed to a system where, when two pods are present, they are both in the machine at the same time. Moreover, with respect to claim 14, both pods in Fanzutti are in different holders. Indeed, Fanzutti discloses the use of a pair of needles when a pair of pods are used.

The Commissioner is hereby authorized to charge any additional fees which may be required in this application to Deposit Account No. 06-1135.

Respectfully submitted,

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